

# SUNSHINE PERIOD

## COLE, RAYWID & BRAVERMAN

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ALAN RAYWID  
(1930-1991)

CABLE ADDRESS  
"CRAB"

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April 23, 1993

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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### BY HAND DELIVERY

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Notification Of Permitted Written Ex Parte  
Presentation -- MM Docket No. 92-265

Dear Ms. Searcy:

The Sunshine Network, by its attorneys, and pursuant to Section 1.1206(a)(1) of the Commission's Rules, hereby submits an original and one copy of this memorandum and attachment regarding a permitted written ex parte presentation to the Commission Staff regarding MM Docket No. 92-265.

On April 23, 1993, Burt Braverman, of Cole, Raywid & Braverman, counsel for the Sunshine Network, submitted a letter to certain staff of the Common Carrier Bureau, Mass Media Bureau and Office of General Counsel, including Mr. Bill Johnson, Ms. Alexandra Wilson, Ms. Diane Hofbauer, Ms. Rosalie Chiara, and Mr. Jim Coltharp. The letter responds to the letter dated April 16, 1993, from Kenneth Hall, General Manager, WJB-TV, Fort Pierce, Limited Partnership ("WJB-TV"), in MM Docket No. 92-265, F.C.C. 92-543 (Rel. Dec. 24, 1992). Copies of Mr. Hall's letter were sent to the aforementioned staff members.

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April 23, 1993  
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If you have any questions, please contact the  
undersigned.

Respectfully submitted,

  
RICHARD A. BRAVERMAN

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Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: **MM Docket No. 92-265**

Dear Ms. Searcy:

This letter is submitted in response to the letter dated April 16, 1993 from Kenneth Hall, General Manager, WJB-TV Ft. Pierce Limited Partnership d/b/a Coastal Wireless Cable Television. In that letter, Mr. Hall took issue with statements contained in our letter of March 10, 1993, which responded to a misstatement of fact contained in WJB-TV's Reply Comments in Docket 92-265. In particular, Mr. Hall sought to create the impression that the Sunshine Network has unreasonably delayed in making its programming available to WJB-TV because of the existence of an exclusive contract between Sunshine Network and an affiliate for the area that WJB-TV seeks to serve. He then argued that the Commission should therefore clarify that exclusive contracts are presently prohibited by Section 19 of the Cable Television Consumer Protection and Competition Act, which became generally effective on December 4, 1992. The purpose of this letter is to correct the misimpression sought to be created by, and several misstatements contained in, Mr. Hall's April 16 letter.

As we explain below, any supposed delay in the Network's provision of programming to WJB-TV was not attributable to any policy, or change in policy, of the Network, but rather to

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(1) WJB-TV's own actions, (2) the existence of a contract containing an exclusivity provision with which Sunshine Network presently is contractually obliged to comply, and (3) the need to await the release of the Commission's regulations governing exclusive contracts, which will reveal the extent to which such contracts do or do not remain effective.

First, WJB-TV itself has caused several delays in the processing of its request for service. Initially, as Mr. Hall implicitly concedes in his April 16, 1993 letter, WJB-TV contacted the Network under the name of "Coastal Wireless Cable Television". However, it later pursued its request for service, and even filed Comments before the Commission in this docket proceeding, under the name of "WJB-TV". Although Mr. Hall states that Coastal filed a Certificate of Assumed Name with the Florida Secretary of State, which purported to make the connection between these two entities, and while he proclaims that "no effort has been made to hide or disguise that fact", Sunshine Network was not informed by Coastal, WJB-TV, Mr. Hall or anyone else associated with them of the relationship between the two companies. WJB-TV's choice of proceeding under two different names resulted in the first delay in processing its request for service from the Network.

Thereafter, WJB-TV delayed in returning necessary information to the Network (e.g., maps of its proposed service area), and later returned proposed forms of affiliation agreement containing inconsistent information, resulting in further delays. Moreover, as WJB-TV was informed during negotiations, the matter had to be submitted to Sunshine's legal department for review. Other actions by WJB-TV caused still further delays in the processing of WJB-TV's request for service.

Notwithstanding all of these actions by WJB-TV, Sunshine Network proceeded with the orderly processing of WJB-TV's request for service. During the course of that process, it was determined that an affiliate of the Network had exclusive programming rights that, if still effective under the 1992 Cable

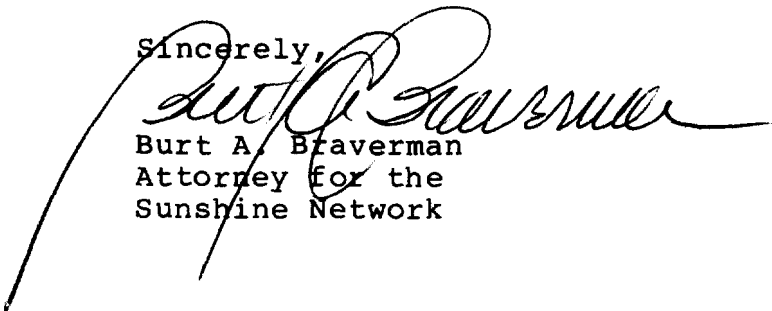
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19(b) does not even refer to exclusive contracts, which are dealt with specifically under Section 19(c). However, before it can be determined whether Sunshine Network's preexisting exclusive program contract with its affiliate has been preempted by Section 19(c) of the 1992 Cable Act, Sunshine Network must first review the Commission's forthcoming regulations in order to determine whether, and if so when, the prohibition will apply to this exclusive contract. For example, the regulations' provisions regarding the 120-day transition period must be examined to determine whether Sunshine Network's existing affiliate has any continued right to exclusivity during that period, including the right to continued exclusivity during the pendency of any petition for waiver. In short, while the Commission's general policy regarding non-grandfathered exclusive programming contracts may be clear, the precise implementation of that policy has not yet been articulated. Consequently, as Sunshine Network stated to WJB-TV, the Network cannot authorize WJB-TV to commence carriage of its programming, and cannot ignore the terms of its preexisting contract, until such time as the Commission issues its regulations.

WJB-TV so much as recognizes all of this, conceding that "Sunshine never specifically stated that they would not sell their programming to us" and acknowledging that "we believe that Sunshine fully intends to make its programming available to Coastal...". Yet, through inaccurate and incomplete factual statements, it attempts to create the impression that Sunshine has unreasonably delayed the process of making its programming available to WJB-TV. That is simply untrue.

Sunshine believes that issuance of the Commission's regulations is essential to attaining a proper understanding of the impact of Section 19 of the Act on existing exclusive programming contracts. Sunshine seeks neither to delay WJB-TV's affiliation with the Network, nor to violate contract rights of affiliates who may have entered into exclusive program contracts prior to passage of the 1992 Cable Act. Rather, Sunshine Network seeks only to accomodate both of these competing interests and to act in full compliance with federal law. As the Network has previously informed WJB-TV, Sunshine Network will await the release of the Commission's program access regulations and will then promptly act upon WJB-TV's request for service.

Sincerely,



Burt A. Braverman  
Attorney for the  
Sunshine Network

cc: Mr. Kenneth Hall